



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 07-0016

IN THE MATTER OF PAUL HOEY

DISPOSITION AGREEMENT

The State Ethics Commission and Paul Hoey enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 24, 2007, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Hoey. The Commission has concluded its inquiry and, on March 14, 2007, found reasonable cause to believe that Hoey violated G.L. c. 268A.

The Commission and Hoey now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Hoey is a Civil Engineer IV for the Massachusetts Highway Department (MassHighway). From November 2005 until August 2006, Hoey served as the acting District Maintenance Engineer (DME).
2. On February 10, 2006, MassHighway posted a Notice of Promotional Opportunity for a Civil Engineer II position. The job posting stated that applicants must currently hold a civil engineer position at MassHighway with the "next lower" job title. Applicants were instructed to send their resume and cover letter to MassHighway's human resources office in Boston.
3. MassHighway received 14 applications that met the minimum requirements.
4. One of the applicants for the position was Hoey's son.
5. Hoey did not disclose to his appointing authority that his son was a candidate for the position.
6. As the acting DME, Hoey was responsible for chairing job searches. Hoey selected and chaired a three-person committee to handle the Civil Engineering II promotion; the other two committee members were Hoey's subordinates.
7. The committee reviewed the 14 applicants, including Hoey's son.
8. As the acting DME, Hoey decided to base the promotion on a written test of civil service questions. Hoey received input from the other committee members but decided himself what questions to include.

9. The test was taken by all candidates for the position including Hoey's son.

10. Hoey alone proctored the test, which was administered to his son and the other candidates at the same time.

11. Afterwards, Hoey and the other committee members individually scored each test and combined their scores to arrive at an overall score for each candidate.

12. Hoey's son scored second highest on the test.

13. On April 14, 2006, Hoey forwarded the scores of the top 12 candidates to the appointing authority for the Civil Engineer II position.

14. The first candidate accepted the position.

15. MassHighway had been prepared to promote three people from the posting but after learning of Hoey's participation in the matter decided not to use the results for subsequent hirings. In addition, MassHighway removed Hoey from the acting DME position and returned him to his civil engineer position and compensation.

Conclusions of Law

16. As a MassHighway employee, Hoey is a state employee.^{1/}

17. Except as the section otherwise permits, G.L. c. 268A, §6^{2/} prohibits a state employee from participating as such in a particular matter in which to his knowledge, an immediate family member^{3/} has a financial interest. The determination as to whom to promote to the Civil Engineer II position was a particular matter.^{4/}

18. Hoey participated^{5/} as the acting DME in the Civil Engineer II promotion determination by reviewing applications, deciding to base the promotion on a written test, determining which questions to include on the test, administering the test to his son and the other candidates, scoring the tests and forwarding the scores of the top 12 candidates on to the appointing authority.

19. Hoey's son, as an applicant for the Civil Engineer II promotion, had a financial interest in the matter. Hoey knew of his son's financial interests at the time he participated in the promotion process.

20. Accordingly, by participating in the promotion process for the Civil Engineer II position, as set forth above, Hoey participated in his official capacity in particular matters in which he knew an immediate family member had a financial interest, thereby violating G.L. c. 268A, § 6.

21. Hoey cooperated with the Commission's investigation.

-Resolution-

In view of the foregoing violations of G.L. c. 268A by Hoey, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Hoey:

(1) that Hoey pay to the Commission the sum of two thousand dollars,

(\$2,000.00) as a civil penalty for violating G. L. c. 268A § 6; and

(2) that Hoey waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: May 14, 2007

¹ "State employee" means, in relevant part, "a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation on a full, regular, part-time, intermittent or consultant basis." G.L. c. 268A, §1(g).

² None of the § 6 exemptions apply in this case

³ "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters.

⁴ "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

⁵ "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).